HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 236 (SS) of 2001
(Old no. 22418 of 2000)

Sachchida Nand Tripathi s/o Sri Jamwant Tripathi,
Village Bakania Dweep, P.O. Marwatia Babu,
District Basti ..... Petitioner

Versus

1. The Inspector General of Registratio,
   U.P. Allahabad.
2. The District Registrar, Nainital
3. Inspector General of Registration,
   Uttaranchal, Dehradun. ..... Respondents

Sri Manoj Tiwari & Sri M.K. Sharma Advocate for the petitioner
Standing Counsel for the respondents.

Dated: March 31, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri Manoj Tiwari and Sri M.K. Sharma, counsel for the petitioners and Sanding counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order date 10.4.2000 passed by the respondent no.1. Further prayer has been made for a writ of mandamus to appoint the petitioner as Registration Clerk in the Department.

Briefly stated, the petitioner was appointed on the post of Registration Clerk in the office of the District Registrar, Nainital and worked there from 1987 to 1990 with some artificial breaks. In the year 1989 there were four posts of Registration Clerk vacant in the office of respondent no. 1. Respondents no. 1. in

order to fill up the vacant posts required the names of qualified candidates from the employment Exchange office. The name of the petitioner was at serial no. 2 in the list submitted by the Employment Officer. The petitioner and other candidates appeared before the Selection committee of the Department. In the Select list the name of the petitioner was found place at serial no. 3. The petitioner has alleged that he was at serial no. 2 in the select list but his name was wrongly placed at serial no. 3 He submitted that on his complaint an enquiry was ordered against the respondents but due to the pressure of political personals, it has not completed till today and record regarding appointment has been misplaced. The petitioner has alleged that the record of selection was intentionally lost by the authorities.

The petitioner preferred a writ petition No. 16180 of 1991 and Allahabad High court decided the same on 18.9.1998. Direction was issued to the petitioner that he may file a representation before the authorities. The petitioner has submitted that he preferred his representation to the respondent no. 1.

On 10.4.2000 the petitioner received a letter from respondent no. 1 mentioning therein that the validity of the select list was for only one year and denied that the name of the petitioner was placed from Sl. No. 2 to sl. No. 3.

Counter affidavit has been filed by the respondents. Respondents have submitted that the name of the petitioner was at sl. No. 2 in the list submitted by the Employment Officer and after interview before the Selection Committee his name was found place at Sl. No. 3 of the Select list. They have submitted that the Government had imposed ban on fresh

appointment vide G.O. dated 27.12.1989, therefore, the petitioner could not be appointed. The selection list lapsed after a period of one year. The name of the petitioner was at Sl. No. 3 in the select list while only one candidate, which was at serial no. 1 was given appointment. Record of the selection is still available in the office of Commissioner, Kumaon Division, Nainital.

The submission of the counsel for the petitioner is that four posts were created by the government. Out of which one post was reserved for Scheduled Cast. He stated that the name of the petitioner was placed at sl. No. 2 and three posts were available for general candidates. Therefore, the petitioner was entitled to be appointed on the post of Registration Clerk.

The learned counsel has submitted that the ban imposed by the government on fresh appointment was lifted on 24.9.1990 and at that time the merit list was still subsisting. The learned counsel for the petitioner further submitted that the validity period of selection list can be extended for further three months in accordance with G.O. No. 8/30/1975- Karmik-2 dated January 27, 1977. The petitioner has alleged that appointment was deliberately denied by the respondents. The petitioner was declared successful in the selection held on 23.12.1989. He had a vested right of appointment against one of the three posts for which selection was made and the subsequent selection was made on 30.1.1991.

The learned counsel for the petitioner placed reliance on the judgment dated 29.5.1997 passed by a Division bench of Allahabad High Court in Writ Petition No. 41200 of 1994, Dr. Ms. Ragini Srivastava vs. Sate of U.P. In that case it has been observed as under:-

"After considering the respective contentions of the parties we find that in the present case on the admitted facts the Government sent requisition for names from the waiting list on 6.9.1994 within one year from the date of the declaration of result on 9.9.1993. Thereafter, the Commission could not refuse the recommendation of names from the waiting list as an admitted fact the waiting list was still then alive. The government also proceeded erroneously in not insisting from recommendation of names from the waiting list treating the waiting list as already lapsed. The petitioner admittedly was not at fault in respect of such acts of the Commission and of the State Government."

In view of the above, a writ of certiorari is issued quashing the order-dated 10.4.2000 passed by the respondent no. 1. The respondents are directed to consider the appointment of the petitioner on the post of Registration Clerk within one month after obtaining the certified copy of this order.

Accordingly, writ petition is allowed. No order as to costs.

Dated: March 31, 2006 **Rajesh Tandon, J.**

*****Dhyani